IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 18339 of 2006(G)

PETITIONER:

M.K. SANJEEV, AGED 50 YEARS,
S/O. KESAVAN, C.NO.4980, CENTRAL PRISON, VIYYUR.

BY ADV. SRI.V.JOHN SEBASTIAN RALPH
SMT.PREETHY KARUNAKARAN

RESPONDENTS:

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1. THE SECRETARY,
MINISTRY OF HOME AFFAIRS, GOVT. OF KERALA,
THIRUVANANTHPAURAM.

2. INSPECTOR GENERAL OF PRISONS,
THIRUVANANTHAPURAM.

3. SUPT. OF PRISON,
CENTRAL PRISON AT VIYYUR.

4. CBI, REPRESENTED BY THE PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM (RC.10/A/93-KER)

BY GOVERNMENT PLEADER SRI.M.S.BREEZ
SRI.S.SREEKUMAR, SC FOR CBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C) No.18339 of 2006

Dated this the 12th day of July, 2007

JUDGMENT

The grievance of the petitioner is that he has not been granted proper set off to which he is entitled under law in C.C.No.4 of 1994 of the Special Judge, CBI Cases, Ernakulam. The precise grievance raised by him in the course of arguments is that though he is entitled for set off for the period 16.04.1993 to 09.09.1994, he has been granted set off only for 13 days.

2. Report of the learned Special Judge was called for. The learned Special Judge has produced before the Court the order in Crl.M.P No.112/2006, which shows that the petitioner is entitled for 29 days' set off in C.C.No.4 of 1994.

3. The learned counsel for the petitioner relying on the decision in **State of Maharashtra v. Najakat Alie Mubarak Ali** [2001(6) SCC 311] contends that the learned Special Judge has not taken into account the fact that the petitioner has remained in custody from 16.04.93 to 09.09.94 admittedly in C.C.No.4 of 1994. The learned counsel for the petitioner contends that set off must have been granted for the period 16.04.93 to 09.09.94 and also from 20.12.1997 to 21.12.1997.

4. The crux of the dispute to be considered is whether the petitioner is entitled for set off for the period 16.04.93 to 26.4.93, which alone has now been granted and whether he is entitled for set off for the period 16.04.93 to 09.09.94 as claimed by him.

5. The report of the learned Special Judge clearly shows that the petitioner was produced before the learned Special Judge on 16.04.1993. He was remanded upto 24.04.93. His remand was extended upto 26.04.1993. He was sent under transit warrant dated 26.04.93 to Mumbai. Though he had been granted bail on 10.05.93 and he had executed a bail bond on 28.06.93, he was not released from custody actually and he was released from custody later only on 9.9.94 after he was brought back from Mumbai and executed fresh bail bond in C.C.No.4 of 1994. In these circumstances, I am of the opinion that the petitioner is entitled for set off for the period 16.04.93 to 09.09.1994 and not only for the period 16.04.93 to 26.04.93. Of course, it is true that there is overlapping of the period of custody in two cases in so far as it relates to the period 29.04.93 to 25.08.94. But in the light of the decision in **Najakat** (supra), overlapping is of no consequence and the petitioner is entitled for such set off in both cases.

6. This Writ Petition is, in these circumstances, allowed. The learned Special Judge for CBI Cases-I, Ernakulam shall now issue a

revised warrant of commitment in C.C.No.4 of 1994 making it clear that the petitioner is entitled for set off for the period 16.04.93 to 09.09.1994 and from 20.12.1997 to 21.12.1997. The said direction shall forthwith be carried out by the prison authority. The learned counsel for the petitioner submits that if such set off were granted, the petitioner will have to be released from custody forthwith. Immediate necessary action shall be taken hence by the learned Special Judge as also the prison authorities.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-